IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 5, 2006 Session

HERBERT A. HOLCOMB, JUVENILE COURT JUDGE FOR HAWKINS COUNTY, TENNESSEE v. CROCKETT LEE, COUNTY MAYOR FOR HAWKINS COUNTY, TENNESSEE

Appeal from the Chancery Court for Hawkins County
Nos. 13757, 14317, 14689, 15096, 15422, & 15717
Darryl R. Fansler, Chancellor, by Designation

No. E2005-01451-COA-R3-CV - FILED MAY 23, 2006

This appeal involves six different lawsuits filed by Hebert A. Holcomb, the Juvenile Court Judge for Hawkins County, Tennessee. In each of these lawsuits, Judge Holcomb sued the Hawkins County Executive/County Mayor seeking additional funding for the salaries of various personnel positions. Each of the six petitions was met with a motion to dismiss claiming Judge Holcomb did not have standing to bring these lawsuits pursuant to Tenn. Code Ann. § 8-20-101, the statute which authorizes court clerks to bring lawsuits seeking relief of this nature. In response to the motions to dismiss, Judge Holcomb argued he had the inherent power to bring these six lawsuits. The Trial Court disagreed with Judge Holcomb's analysis of the inherent powers doctrine and dismissed the lawsuits. We affirm the dismissal of the six lawsuits, but for reasons other than those set forth by the Trial Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

R.B. Baird, III, Rogersville, Tennessee, for the Appellant Herbert A. Holcomb, Juvenile Court Judge for Hawkins County, Tennessee.

Thomas L. Kilday, Greeneville, Tennessee, for the Appellee Crockett Lee, County Mayor for Hawkins County, Tennessee.

OPINION

Background

This litigation began in July of 1999 when Herbert A. Holcomb, the Juvenile Court Judge for Hawkins County, Tennessee, filed a lawsuit against Heiskell Winstead, the County Executive for Hawkins County. In the complaint, Judge Holcomb sought additional funding for secretarial/clerical personnel and for the positions of Juvenile Services Director and Youth Service Officer. According to Judge Holcomb:

> Petitioner avers that due to the work load necessary to carry out his duties and responsibilities as Juvenile Court Judge, it is necessary that he have sufficient and competent secretary/clerical personnel. Petitioner avers that it is essential that he be allowed to establish staff/clerical salaries per annum at a total of $43,562.00 which includes salaries for two (2) full time secretary/clerical personnel. Further, Petitioner avers that due to the work load necessary to carry out his duties and responsibilities as Juvenile Court Judge, it is necessary that he have sufficient and competent Juvenile Services Director and Youth Service Officers. Petitioner avers that it is essential that he be allowed to establish Juvenile Services Director and Youth Service Officer salaries per annum at a total of $74,573.00 which includes salaries for two (2) full time Youth Service Officers and one (1) Juvenile Services Director.

The complaint then referenced other funds allocated to the operation of the Hawkins County Juvenile Court and Judge Holcomb's assessment that the amount of these allocations were appropriate.

The defendant, County Executive Heiskell Winstead, filed a motion to dismiss claiming that pursuant to Tenn. Code Ann. § 8-20-101, Judge Holcomb was not the proper party plaintiff to bring such a lawsuit as that statute requires such lawsuits be brought by the court clerk.

In June of 2000, the Trial Court issues a memorandum opinion stating that the "primary issue now presented for adjudication is whether Petitioner maintains standing to prosecute the case at bar." The Trial Court explained that Judge Holcomb's argument as to why he had standing was two-fold:

> Plaintiff Holcomb first urges that the action should proceed in the nature of *quo warranto*. Second, Plaintiff asserts that pursuant to the inherent powers of the juvenile court of Hawkins County, Tennessee, he may exercise the authority to seek relief essential to the Court's

existence and necessary to the orderly and efficient exercise of its jurisdiction.

The Trial Court concluded that Judge Holcomb was not within the class of county officials permitted to institute salary petitions pursuant to Tenn. Code Ann. § 8-20-101. The Trial Court also concluded that Judge Holcomb failed to present sufficient evidence for maintaining the action as one in *quo warranto*. However, the Trial Court went on to hold that Judge Holcomb did have standing to prosecute the case pursuant to his inherent powers as the Hawkins County Juvenile Court Judge.

Although the first lawsuit never officially was resolved, Judge Holcomb continued to file similar lawsuits each successive year. Lawsuits were filed in October of 2000, September of 2001, and August of 2002. The County Executive continued to file motions to dismiss arguing that Judge Holcomb was not the proper party to pursue these lawsuits according to Tenn. Code Ann. § 8-20-101. The defendant also argued that the inherent powers doctrine did not give Judge Holcomb standing to prosecute lawsuits of this nature. In September of 2003, the Trial Court denied the several motions to dismiss, again concluding that Judge Holcomb had standing to prosecute the lawsuits through his inherent powers as the Hawkins County Juvenile Court Judge.

The above-referenced cycle continued unabated. In September of 2003, Judge Holcomb filed yet another petition seeking an increase in the salary for the same staff positions addressed in the first petition, although the total amount of funding for the salaries for which Judge Holcomb was seeking an increase often grew with the successive petitions. Judge Holcomb's petition was met with another motion to dismiss based on the same reasons set forth previously. The defendant's motion to dismiss also claimed that the complaint should be dismissed for failure to join indispensable parties, with those indispensable parties being the Hawkins County legislative body. Finally, the defendant also claimed that the lawsuits should be dismissed because, even assuming Judge Holcomb did have the inherent power to bring a lawsuit seeking this relief, the lawsuit had to be filed as a petition for writ of mandamus and brought in the circuit court.

In September of 2004, Chancellor Thomas R. Frierson, II, recused himself from these cases. The cases then were assigned to Chancellor Daryl R. Fansler of Knox County, sitting by designation. Shortly after Chancellor Fansler was assigned to preside over these cases, Judge Holcomb filed another petition in September of 2004, and the defendant filed a corresponding motion to dismiss.[1] In this the final petition, Judge Holcomb sought staff/clerical salaries totaling $54,480 for two full-time secretary/clerical personnel, and a total of $109,725 for the salaries of two full-time Youth Service Officers and one Juvenile Services Director.

[1] In actions brought pursuant to Tenn. Code Ann. § 8-20-101, the petitioner was required to name the County Executive as the defendant. *See* Tenn. Code Ann. § 8-20-102. The title of "County Executive" was officially changed to "County Mayor" in 2003. *See* Compiler's Notes to Tenn. Code Ann. § 5-6-101. Thus, as of 2003, lawsuits pursuant to Tenn. Code Ann. § 8-20-101 should be brought against the County Mayor.

A hearing was held on April 4, 2005. The Trial Court issued a memorandum opinion following the hearing making several legal conclusions. First, the Trial Court stated:

> Chancellor Frierson had previously found that petitioner does not fall within the class of county officials permitted to institute salary petitions pursuant to T.C.A. § 8-20-101. This Court agrees with Chancellor Frierson in that regard, but would note that the Juvenile Court of Hawkins County does apparently have a clerk and, as such, said clerk might have standing to pursue a salary petition under the Act.

With regard to the previous ruling that Judge Holcomb had inherent powers to prosecute these cases, Chancellor Fansler concluded that the doctrine "has been misplaced in its application to the facts of these cases." Specifically, Chancellor Fansler concluded that the doctrine of inherent powers "consists of all powers reasonably required to enable a court to perform officially *its judicial functions* to protect its dignity, independence and integrity and to make *its lawful actions effective*." (emphasis in original and citing *Anderson County Quarterly Courts v. Judges,* 579 S.W.2d 875, 879 (Tenn. Ct. App. 1978)). Chancellor Fansler then held:

> In this case there has been no exercise of the inherent authority of the Juvenile Court for Hawkins County. In effect, the petitions asked Chancery Court to exercise its inherent powers to order the legislative body of Hawkins County to fund positions and salaries for another court, i.e., the Juvenile Court.
>
> It is this Court's opinion that Chancery is without jurisdiction to do such. Thus, finding no exercise of the inherent power by the Juvenile Court, other than to seek redress in Chancery, this Court can find no claim stated for which relief may be granted and, accordingly, dismisses the actions.

Judge Holcomb appeals claiming the Trial Court erred in dismissing his lawsuits after finding that the Chancery Court had no jurisdiction to entertain the relief sought under the inherent powers doctrine. The defendant argues the Trial Court correctly determined that Judge Holcomb did not have standing through the inherent powers doctrine to pursue this litigation and, even if he did, the lawsuit was properly dismissed for Judge Holcomb's failure to join the Hawkins County legislative body as an indispensable party defendant.

Discussion

Our standard of review as to the granting of a motion to dismiss is set out in *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714 (Tenn. 1997). In *Stein*, our Supreme Court explained:

> A Rule 12.02(6), Tenn. R. Civ. P., motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint, not the strength of a plaintiff's proof. Such a motion admits the truth of all relevant and material averments contained in the complaint, but asserts that such facts do not constitute a cause of action. In considering a motion to dismiss, courts should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true, and deny the motion unless it appears that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. *Cook v. Spinnaker's of Rivergate, Inc*., 878 S.W.2d 934, 938 (Tenn. 1994). In considering this appeal from the trial court's grant of the defendant's motion to dismiss, we take all allegations of fact in the plaintiff's complaint as true, and review the lower court's legal conclusions *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d); *Owens v. Truckstops of America*, 915 S.W.2d 420, 424 (Tenn. 1996); *Cook, supra*.

Stein v. Davidson Hotel Co., 945 S.W.2d 714, 716 (Tenn. 1997).

Tenn. Code Ann. § 8-20-101 provides, in relevant part, as follows:

> (a) Where any one (1) of the clerks and masters of the chancery courts, the county clerks and the clerks of the probate, criminal, circuit and special courts, county trustees, registers of deeds, and sheriffs cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person's office in the following manner and under the following conditions, namely:
>
> > (1) The clerks of the circuit, criminal, and special courts may make application to the judge, or any one (1) of the judges, of their respective courts, in term time or at chambers, by petition duly sworn to, setting forth the facts showing the necessity for a deputy or deputies or assistants,

> the number required and setting forth the salary that should be paid each;
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> * * * *
>
> (3) The clerks and masters of the chancery courts, county trustees, county clerks and clerks of the probate courts, and registers of deeds may make application to the chancellor, or to one (1) of the chancellors (if there be more than one (1)), holding court in their county by sworn petition as above set forth, showing the necessity for a deputy or deputies or assistants, the number required and the salary each should be paid.

Tenn. Code Ann. § 8-20-101.

Based on the clear language of the statute, the Juvenile Court Judge is not a proper county official to bring an action pursuant to Tenn. Code Ann. § 8-20-101, and both Chancellor Frierson and Chancellor Fansler were correct in so ruling. The more difficult issue is whether, separate and apart from Tenn. Code Ann. § 8-20-101, Judge Holcomb has the inherent power to bring the present lawsuit. The inherent powers doctrine was discussed by this Court at length in *Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875 (Tenn. Ct. App. 1978). In *Anderson County*, the primary issues surrounded the propriety of an injunction issued by Judge Davis which restrained the use of a former chancery courtroom for any purpose other than as a witness or grand jury room. *Id.* at 876. In discussing whether Judge Davis had the inherent power to issue such an injunction, we stated:

> The concept of inherent powers has been utilized by the courts most often and strongly in insuring proper funding of the judicial function. In this context, the concept has been defined in this manner:
>
> > The courts are a constitutionally created branch of government whose continued effective functioning is indispensible (sic); performance of that constitutional function is a responsibility committed to the courts; this responsibility implies the authority necessary to carry it out …. [Hazard, McNamera & Sentilles, *Court Finance and Unitary Budgeting*, 81 Yale L.J. 1286 at 1287 (1972)].
> >
> > The phrase "inherent powers" is used to refer to powers included within the scope of a court's jurisdiction

> which a court possesses irrespective of specific grant by constitution or legislation. 20 Am.Jur.2d *Courts* § 78 (1964).
>
> The term "inherent power of the judiciary" means that which is essential to the existence, dignity and functions of the court from the very fact that it is a court. *In Re Integration of Nebraska State Bar Ass'n*, 133 Neb. 283, 286, 275 N.W. 265, 267 (1937).
>
> *Inherent powers* consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. Carrigan, [*Inherent Powers of the Courts*, Nat'l C. St. Judiciary 1, 2 (1973)].…

The inherent power that vests in a court at its creation, however, is not unlimited.

> The inherent powers of a court do not increase its jurisdiction; they are limited to such powers as are essential to the existence of the court and necessary to the orderly efficient exercise of its jurisdiction. 20 Am.Jur.2d *Courts* § 78 (1964).

Primarily, the use of the inherent powers doctrine has been, but not exclusively limited to, securing relatively minor fiscal expenditures necessary for the courts to operate. *See e.g., Powers v. Isley*, 66 Ariz. 94, 183 P.2d 880 (1947) (court has the inherent power to fix the salaries of court reporters); *Millholen v. Riley*, 211 Cal. 29, 293 P. 69 (1930) (inherent power to fix salary of secretaries to appellate courts); *Smith v. Miller*, 153 Colo. 35, 384 P.2d 738 (1963) (fixing salaries of clerks in trial court and probation officers); *State v. Rush*, 46 N.J. 399, 217 A.2d 441 (1966) (holding counties responsible for paying court appointed attorneys); *Judges of Third Judicial Circuit v. County of Wayne*, 383 Mich. 10, 172 N.W.2d 436 (1969) (would allow court to employ a law clerk or law clerks).

In *Noble County Council v. State*, 234 Ind. 172, 125 N.E.2d 709 (1955), it was held that judges have the authority to determine the necessity and choice of additional court employees, in this case a probation officer. In *Montgomery v. Board of Chosen Freeholders*, Cir. No. L-23910-70, Super. Ct., Passaic Co., N.J. (1971), the issue

> concerned the need for additional clerks and how many would be employed.
>
> In *Milburn v. Burns*, 1 Ariz.App. 147, 400 P.2d 354 (1965), the court used its inherent powers to determine the time a salary increase would take effect.…

The *Anderson County* Court went on to point out that the inherent powers doctrine is not a vehicle for unwarranted "flexing" of the judicial power, and the generally recognized standard requires its use to be reasonable and necessary. *Id*. at 879. In order to prevent improper judicial flexing, this Court adopted a principle that when utilizing the inherent powers doctrine, "the court asserting the power must establish reasonable necessity by 'clear, cogent and convincing proof.'" *Id*. at 881 (quoting *In Re Juvenile Director*, 87 Wash.2d 232, 552 P.2d 163 (1976)). In reaching this conclusion we relied heavily on *In Re Juvenile Director* wherein the Washington Supreme Court adopted that standard after concluding that under some circumstances, a court has the inherent power to set salaries of court personnel. *Anderson County*, 579 S.W.2d at 880.

In the various complaints, Judge Holcomb alleges that in order for him to carry out his duties as a juvenile court judge, it is necessary that he have competent secretarial and clerical personnel, as well as a competent Juvenile Services Director and Youth Service Officers. In order to carry out the necessities of his job, Judge Holcomb asserted that these personnel positions with the corresponding salaries in the amount requested were "essential." Having said that, there is no reasonable dispute that Hawkins County must provide the Hawkins County Juvenile Court with sufficient funds for Judge Holcomb to efficiently perform his judicial function as juvenile court judge. In light of this Court's opinion in *Anderson County*, *supra*, we believe that if Judge Holcomb can prove by clear, cogent and convincing evidence that the additional requested monetary allocation is both reasonable and necessary for him to efficiently carry out his duties as the Hawkins County Juvenile Court Judge, then Judge Holcomb has stated a claim upon which relief can be granted pursuant to his inherent authority as the juvenile court judge. Therefore, we believe Chancellor Fansler erred in analyzing Judge Holcomb's argument that he had the inherent power to bring a claim of this nature in terms of it actually being a request for the Chancery Court to exercise its inherent powers. If Judge Holcomb has the inherent power to bring a lawsuit seeking such relief, then the court being asked to grant the relief is not being asked to utilize its inherent powers.

To summarize up to this point, we believe Judge Holcomb does have the inherent power to bring a lawsuit to force Hawkins County to adequately fund the Hawkins County Juvenile Court with sufficient funds for Judge Holcomb to efficiently perform the judicial functions associated with his court. In order to succeed with such a lawsuit, Judge Holcomb must prove by clear, cogent and convincing evidence that the additional requested monetary allocation is both reasonable and necessary for him to efficiently carry out his duties as the Hawkins County Juvenile Court Judge.

The next issues then become whether Judge Holcomb filed the proper type of lawsuit and, if so, whether it was filed in the proper court, keeping in mind that the true nature of the various lawsuits is to force Hawkins County to comply with its legal duty to adequately fund the juvenile court if it is shown Hawkins County has not already satisfied its duty. As noted previously, the defendant claimed in his motion to dismiss that if Judge Holcomb did have the inherent power to bring these lawsuits, they had to be filed as petitions for writ of mandamus and filed in the circuit court. This issue never was resolved by the Trial Court.

Tenn. Code Ann. § 5-1-107 provides as follows:

> **Mandamus to enforce county duties. –** The performance of any duty made incumbent by law upon the county may be enforced by mandamus from the circuit court, according to the nature of the case.

In an opinion filed on March 2, 1999, the Tennessee Attorney General was asked what actions a circuit court judge could take to force a county to comply with a statutory directive to furnish a courtroom for the Eighth Circuit Court of the Twentieth Judicial District. Op. Tenn. Atty. Gen. No. 99-049, 1999 WL 137667 (Mar. 2, 1999). The Attorney General responded, in part, as follows:

> If the trial judges deem courtroom facilities to be insufficient, they may use normal political processes to address those needs. Under compelling circumstances, a court may use its inherent authority to issue orders directing a county's provision of facilities to allow the functioning of the court. *See* Op. Tenn. Atty. Gen. 97-117 (Sept. 2, 1997), question 3…. Tennessee law has consistently recognized that judges have inherent powers included within the scope of a court's jurisdiction irrespective of specific grant by the Constitution or legislation. Inherent power is that power essential to the existence, dignity and functions of a court from the very fact that it is a court. *Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875, 878 (Tenn. Ct. App. 1978). The inherent powers doctrine has been used mainly to secure minor fiscal expenditures necessary for the courts to operate. *Id.* at 879. Because invoking inherent powers can interfere with the legitimate constitutional prerogatives of the other branches of government, reviewing courts are sensitive to the encroachment upon the authority of county legislative bodies over such matters. In Tennessee, the use of inherent powers is limited by the requirement that the court asserting the power must establish reasonable necessity by clear, cogent, and convincing proof. *Id.* at 881.

> The County's statutory duties under Tenn. Code Ann. § 16-2-505(d)(1) might be judicially enforceable by writ of mandamus brought pursuant to Tenn. Code Ann. § 5-1-107. Writs of mandamus are extraordinary remedies. *State ex rel. Matthews v. Metropolitan Gov't of Nashville & Davidson County*, 679 S.W.2d 946, 948 (Tenn. 1984). Mandamus is proper if proven facts show a clear and specific legal right to be enforced or a duty which ought to be and can be performed. *State ex rel. Ragsdale v. Sandefur*, 215 Tenn. 690, 696, 389 S.W.2d 266, 269 (1965). Even in those cases in which a ministerial duty may clearly be found, enforcing that duty by mandamus may not be automatic when the consequences of enforcement would manifestly prejudice the public interest. *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988). Courts may determine the existence of a duty in the mandamus proceeding itself. *State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. Ct. App. 1994).
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> While mandamus can be used to require public officials to carry out their duty, it cannot be used to affect their judgment or discretion concerning how they perform their duty.… For instance, decisions involving the budget are legislative decisions requiring judgment and discretion. *Lotspeich v. Mayor & Aldermen of Morristown*, 141 Tenn. 113, 121, 207 S.W. 719, 721 (1918). Further, a writ of mandamus should not be used to interfere with the county legislative body's budgetary decisions *unless the legislative body is under some legal obligation to appropriate funds. Jones v. Mankin*, 1989 Tenn. App. LEXIS 325, slip op. (M.S. Tenn. Ct. App. May 5, 1989).…

Op. Tenn. Atty. Gen. No. 99-049, 1999 WL 137667, at ** 2, 3 (emphasis added).

Returning to the present case, because the legislative body, i.e., the Hawkins County legislative body, is under a legal obligation to appropriate sufficient funds to the juvenile court, a mandamus action is the proper vehicle for Judge Holcomb to exercise his inherent powers in the manner sought in this case. Such a suit will afford Judge Holcomb the opportunity to attempt to prove by clear, cogent, and convincing evidence that the additional requested funding is both reasonable and necessary for him to efficiently perform his duties. Since Judge Holcomb did not file a petition for a writ of mandamus, and because such action was not filed in the circuit court as required by Tenn. Code Ann. § 5-1-107, *supra*, we believe the end result reached by Chancellor Fansler in dismissing these lawsuits was correct. In light of this holding, the issue of whether the complaints should be dismissed for failure to join an indispensable party is rendered moot.

Conclusion

The judgment of the Trial Court dismissing the various lawsuits filed by Judge Holcomb is affirmed for the reasons stated herein. This action is remanded to the Trial Court for collection of the costs below. Costs on appeal are assessed to the Appellant, Judge Herbert A. Holcomb, and his surety.

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D. MICHAEL SWINEY, JUDGE